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In the Supreme Court of the United States

OCTOBER TERM, 1974

No. 75-109

JANE HUNERWADEL, for herself and all others similarly situated,

APPELLANT,

FRANCIS BELLOTTI, Attorney General of the Commonwealth of Massachusetts; GARRETT BYRNE, District Attorney for the County of Suffolk; the District Attorneys for all other Counties, their agents, successors, those acting in concert with them, and all others similarly situated,

APPELLANTS,

v.

WILLIAM BAIRD; MARY MOE; PARENTS AID SOCIETY, INC.; GERALD ZUPNICK, M.D.; and all others similarly situated,

APPELLEES.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS

JURISDICTIONAL STATEMENT ON BEHALF OF DEFENDANT-INTERVENOR

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APPELLEES.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS

JURISDICTIONAL STATEMENT ON BEHALF OF DEFENDANT-INTERVENOR

This is an appeal from the order entered April 28, 1975, by the United States District Court for the District of

Massachusetts declaring unconstitutional a statute of the Commonwealth of Massachusetts and enjoining its enforcement. The appellant is Jane Hunerwadel who intervened as a defendant on behalf of herself and all others similarly situated. This statement is submitted pursuant to Rule 13 of the Rules of the Supreme Court to demonstrate that the Court has jurisdiction to consider this appeal and that the questions presented are substantial.

Opinion Below

The opinion of the District Court has not yet been reported. Copies of the order, the substitute order, the opinion of the District Court and the dissenting opinion of Senior District Judge Anthony J. Julian are set forth in the Joint Appendix attached to the Jurisdictional Statement submitted by Attorney General Francis Bellotti in a separate appeal from the District Court order.[1]

Jurisdiction

This action for declaratory and injunctive relief was brought by the appellees under the provisions of 28 U.S.C. §§ 1331, 1343, 2201 and 42 U.S.C. § 1983. The order of the District Court was entered on April 28, 1975. A substitute order correcting inadvertencies in the original order was entered on May 9, 1975, *nunc pro tunc*. The appellant filed her notice of appeal in the District Court on May 20, 1975. The jurisdiction of the Court to review this order

[1] In lieu of filing a joint jurisdictional statement as provided under Supreme Court Rules 46 and 15(3), the appellant and Attorney General Francis Bellotti, the defendant below, have taken separate appeals. However, the appellant refers the Court to the Appendix attached to the Jurisdictional Statement submitted by the Attorney General in his appeal. The appellant's Notice of Appeal is set forth in the Appendix attached to this statement.

is conferred by 28 U.S.C. § 1253. The following decisions sustain the jurisdiction of the Court to review the order of the District Court on direct appeal. *Roe* v. *Wade*, 410 U.S. 113 (1973); *Florida Lime and Avocado Growers, Inc.* v. *Jacobsen*, 362 U.S. 73 (1960).

Statutes Involved

The District Court order declared Section 12P, Chapter 112 of the Massachusetts General Laws unconstitutional. The District Court also declared unconstitutional all other sections of Chapter 112 insofar as they make specific reference to Section 12P. These sections, which are set forth below together with Section 12P, are Sections 12N, 12Q and 12R.

Section 12N

Except in an emergency requiring immediate action no abortion may be performed under sections twelve I or twelve J unless

(1) the written informed consent of the proper person or persons has been delivered to the physician performing the abortion as set forth in section twelve P and
(2) if the abortion is during or after the thirteenth week of pregnancy it is performed in a hospital duly authorized to provide facilities for general surgery.

Except in an emergency requiring immediate action no abortion may be performed under section twelve J unless performed in a hospital duly authorized to provide facilities for obstetrical services.

SECTION 12P

(1) If the mother is less than eighteen years of age and has not married, the consent of both the mother and her parents is required. If one or both of the mother's parents refuse such consent, consent may be obtained by order of a judge of the superior court for good cause shown, after such hearing as he deems necessary. Such a hearing will not require the appointment of a guardian for the mother.

If one of the parents has died or has deserted his or her family, consent by the remaining parent is sufficient. If both parents have died or have deserted their family, consent of the mother's guardian or other person having duties similar to a guardian, or any person who had assumed the care and custody of the mother is sufficient.

(2) The commissioner of public health shall prescribe a written form for such consent. Such form shall be signed by the proper person or persons and given to the physician performing the abortion who shall maintain it in his permanent files.

Nothing in this section shall be construed as abolishing or limiting any common law rights of any other person or persons relative to consent to the performance of an abortion for purposes of any civil action or any injunctive relief under section twelve R.

SECTION 12Q

Any person who commits an act in violation of section twelve L or twelve M shall be punished by a fine of not less than five hundred dollars nor more than two thousand dollars, or by imprisonment of not less than three months nor more than five years, or by both said fine and imprisonment. Conduct which

violates sections twelve L or twelve M which also violates any other criminal laws of the commonwealth, may be punished either under this section or under such other applicable criminal laws. Any person who wilfully violates the provisions of section twelve N or twelve O shall be punished by a fine of not less than one hundred dollars nor more than two thousand dollars.

SECTION 12R

The attorney general or any person whose consent is required either pursuant to section twelve P or under common law, may petition the superior court for an order enjoining the performance of any abortion that may be performed contrary to the provisions of sections twelve I through twelve Q.

Questions Presented

1. Whether Mass. G.L. ch. 112, § 12P, which prohibits physicians from performing abortions on unmarried minor girls under the age of eighteen without parental consent or the consent of a judge of the superior court, is unconstitutional on its face?
2. Whether the District Court erred in refusing to join as necessary party defendants the parents of Mary Moe?
3. Whether the District Court erred in refusing to appoint a guardian ad litem to protect the interests of Mary Moe?
4. Whether the District Court erred in refusing to certify questions to the Supreme Judicial Court of the Commonwealth of Massachusetts for an interpretation of the "good cause shown" provision of Mass. G.L. ch. 112, § 12P?

Statement of the Case

This is a class action for declaratory and injunctive relief. The plaintiffs are Mary Moe,[2] William Baird, Gerald Zupnick, M.D., and Parents Aid Society, Inc., (hereinafter Parents Aid). The defendants are Francis Bellotti, Attorney General of the Commonwealth of Massachusetts and the District Attorneys for all counties in the Commonwealth. Jane Hunerwadel, the appellant, who was permitted to intervene in the District Court, is the mother of three minor girls.

This action was commenced on October 31, 1974, the day before Mass. G.L. ch. 112, § 12P, was to take effect. On that same day, District Judge Frank H. Freedman issued a restraining order temporarily enjoining the enforcement of the statute. After the three-judge court was convened, the hearing on the preliminary injunction was merged with the hearing on the merits. On April 28, 1975, the court entered an opinion and order declaring Mass. G.L. ch. 112, § 12P, and all other sections of Chapter 112 insofar as they make specific reference thereto, unconstitutional, and permanently enjoined their enforcement. A vigorous and lengthy dissent was filed by Senior District Judge Anthony J. Julian.

Mary Moe is a fictitious name for an unmarried, unemancipated, minor girl, who, at the time of trial, was 16 years old.[3] She resides at home with her parents. Neither the

[2] Originally there were three other Mary Moes. The four were referred to as Mary Moe I, II, III and IV. Only Mary Moe I testified in the District Court. The Court dismissed for want of proof as to the other Mary Moes. It should be noted that when the defendants attempted to depose Mary Moe II, counsel for the plaintiffs were unable to locate her.

[3] Since Mary Moe's true identity was not disclosed to the attorneys for either the defendants or the intervenor, it was impossible to effectively cross-examine her testimony or to offer rebuttal testimony. The District Court prohibited the defendants from asking Mary Moe her date of birth, which would have revealed her age at the time of impregnation. If Mary Moe was under the age of 16 at the time of impregnation, she would have been the victim of a statutory rape under Mass. G.L. ch. 16, § 23. Moreover, the court impounded her testimony and directed the attorneys for the defendants and intervenor not to take any steps to learn her true identity.

defendants, the intervenor nor their attorneys know her true identity. At the time this action was brought, she alleged by way of affidavit that she was about nine weeks pregnant and desired to have an abortion without informing her parents. Within several hours after the temporary restraining order was entered, Dr. Zupnick performed an abortion on Mary Moe at the abortion center operated by Parents Aid. Her parents were neither joined as parties to the action nor were they informed of the abortion. The court has refused to appoint a guardian to act in her behalf. Mary Moe testified at trial, *in camera*, that although she had a close relationship with her parents and that her parents loved her and were concerned for her welfare, she wanted the abortion because she felt that if her parents learned of her pregnancy they would get upset and might take some action against the boy who impregnated her.

Gerald Zupnick describes himself as a "contract physician." He performs abortions at centers operated by Parents Aid in both Boston and New York. He is the only physician who performs abortions at Parents Aid in Boston. He resides in New York and travels to Boston two days a week to perform abortions. He is not affiliated with any hospital. Although he occasionally sees other patients, the sole source of his medical income is from abortions performed at Parents Aid. Dr. Zupnick is compensated by Parents Aid on the basis of a fee-splitting arrangement whereby he receives one third of the fee paid for each abortion he performs. At the time of the trial, his most recent check from Parents Aid in Boston for two days work amounted to $600. He has received as much as

$900 for a similar period. Normally, he does not participate in the pre-abortion decision-making process and spends on the average a total of 5 to 7 minutes with each girl. He does not require parental consent for minors who seek abortions without informing their parents. He has performed abortions on minor girls as young as 14 years of age without parental consent.

Although the District Court did not decide whether William Baird had standing to be a plaintiff in this action, a few observations are in order. He describes himself as director and chief counselor of Parents Aid. He testified that under his direction, Parents Aid has provided abortions without parental consent to minor girls as young as 12 years old in New York and 13 or 14 years old in Boston.

The appellant, Jane Hunerwadel, has three daughters who are 9, 12 and 13 years of age. Shortly after this action was commenced, she was allowed to intervene as a defendant on behalf of herself[4] and all others similarly situated. Although she does not believe that any of her daughters are pregnant, she is not absolutely sure. She has neither met Mary Moe nor does she know her true identity. She intervened primarily out of her concern that if one of her daughters were pregnant, they might have an abortion without informing her and her husband. Although she believes that an abortion is the least desirable alternative to an unplanned pregnancy, she would not refuse to consent to one of her daughters having an abortion. However, prior to consenting to an abortion, she would like the opportunity

[4] Jane Hunerwadel intervened in the District Court along with thirteen other parents of unmarried, minor girls. They are Kathleen Roth, John J. Lally, Jr., Patricia A. Lally, Francis Gibson, Elizabeth Gibson, Mary Stanton, Paul Aylward, Joseph Healy, Katherine Healy, Jean Healey, Rita Callahan, R.N., Jerril Walsh, R.N., and Jane Doe, a pseudonym for the mother of an unmarried, 17 year old girl who at the time of intervention was 12 weeks pregnant. The District Court dismissed as to these thirteen intervenors for want of proof.

to discuss with her daughter the circumstances which led to the pregnancy, her feelings about the baby and her feelings about the father. She would also like her daughter to know that she had her parents continued interest and support. Most importantly, she would want the opportunity to explain to her daughter all of the possible alternatives to an abortion and insure that all the resources of the community were made available to her. Finally, if an abortion were to be performed, she would want to be sure that it was performed by a skilled physician at a qualified facility which provided proper follow-up care.

The Questions Are Substantial

The appellant submits that the questions presented by this appeal are substantial and warrant full and plenary consideration by this Court. The impact of the District Court decision can only be described as devastating. By permitting minor, unmarried girls to obtain abortions without first seeking the consent of their parents, the decision condones deception and impedes intrafamily communication. Furthermore, by separating minor girls from their parents, who have always been presumed to be their natural guardians and protectors, the decision strikes at the very heart of the fundamental social unit of our society—the family.

To the extent that the constitutional question presented by this appeal involves parental consent, it is similar to the question presented in *Planned Parenthood* v. *Danforth*, C.A. No. 74-416C(A) (E.D. Mo. 1975), enforcement stayed, 43 U.S.L.W. 3451 (U.S. Feb. 14, 1975), appeal docketed, No. 74-1151, 43 U.S.L.W. 3502 (U.S. Mar. 12, 1975). However, unlike the statute held constitutional in *Danforth*, the Massachusetts statute provides that if a minor girl is unable to obtain parental consent for an abortion, a judge of the superior court may, for "good cause shown," consent to an abortion.

The importance of this issue is reflected by the ever-increasing number of state and federal decisions in the area of parental consent. See, e.g., *Foe* v. *Vanderhoof,* 389 F. Supp. 947 (D. Colo. 1975); *Wolfe* v. *Schroering,* 388 F. Supp. 631 (W.D. Ky. 1974); *Coe* v. *Gerstein,* 376 F. Supp. 695 (S.D. Fla. 1973), *appeal dismissed,* 417 U.S. 279 (1974); *Doe* v. *Rampton,* 366 F. Supp. 189 (D. Utah 1973); *State* v. *Koome,* 84 Wash. 2d 901, 530 P.2d 260 (1975) (*En Banc*).

The decisions in *Roe* v. *Wade,* 410 U.S. 113 (1973), and *Doe* v. *Bolton,* 410 U.S. 179 (1973), are not dispositive of the question of parental consent. In *Wade* the Court specifically noted that neither decision reached the issue of parental consent. See *Roe* v. *Wade,* supra, at 165, n. 67.

I. The Constitutional Question

The Constitutional question presented by this appeal is whether Mass. G.L. ch. 112, § 12P, which prohibits physicians from performing abortions on unmarried minor girls under 18 years of age without parental consent or the consent of a superior court judge, is constitutional on its face.

The appellant submits that this statute is merely a codification of the well-settled common law rule that minors are incompetent to consent to medical treatment. Thus, the statute does not infringe upon any substantive right of minor girls. The appellant further submits that the sole purpose of the statute is to provide additional remedial safeguards to supplement the common law remedy of an action for damages for battery.

A. *The Statute Codifies The Common Law Rule Of Parental Consent*

At common law a minor was presumed incapable of consenting to any medical or surgical procedure. See *Reddington* v. *Clayman,* 334 Mass. 244, 134 N.E.2d 920 (1956); *Bonner* v. *Moran,* 126 F.2d 121 (D.C. Cir. 1941); Prosser, Law of Torts § 18 (4th ed. 1971). Where a physician performed such a procedure on a minor without parental consent, it would amount to battery for which he could be held civilly liable to the minor's parents. *Bonner* v. *Moran,* supra; *Zoski* v. *Gaines,* 127 Mich. 1, 260 N.W. 99 (1925). Although this rule has been criticized as a vestige of the feudal notion that children are the property of their parents, it is designed to protect minors from their own improvidence and incapacity and to prevent unnecessary bodily intrusions by overzealous physicians. See Note, 60 Va. L. Rev. 305, 309 (1974). It can easily be seen that the Massachusetts statute is a codification of this rule.

It should be noted that under Mass. G.L. ch. 112, § 12N, parental consent for an abortion is not necessary in the event of an emergency. This provision codifies the long-recognized exception that a physician need not obtain parental consent where medical treatment is necessary to save the life of the child and the parents are unavailable. If the statute derogates at all from the common law, it lessens the rights of parents. First, it lowers the age required for parental consent from 21 to 18 and, second, it vests in the superior court the power to override the judgment of a minor girl's parents.

B. *The Decisions of* Wade *And* Bolton *Should Not Be Extended To Minor, Unmarried Girls*

The District Court found that the decisions of *Roe* v. *Wade,* supra, and *Doe* v. *Bolton,* supra, are applicable to

minors as well as adults. This, of course, assumes that minors are entitled to the same constitutional protection as adults. The appellant submits that the decisions of this Court clearly indicate that minors have not been accorded the same constitutional protection as adults.

For example, in *McKeiver* v. *Pennsylvania,* 403 U.S. 528 (1971), this Court held that a minor was not entitled to a trial by jury which was held to be a fundamental right in *Duncan* v. *Louisiana,* 391 U.S. 145 (1968). Moreover, minors have traditionally been excluded from exercising other fundamental rights such as the right to vote, *Harper* v. *Virginia Board of Elections,* 383 U.S. 663 (1966); see also, *Oregon* v. *Mitchell,* 400 U.S. 112 (1970); and, absent parental consent, the right to marry. *Loving* v. *Virginia,* 388 U.S. 1 (1967).

The appellant submits that the reasoning of *Wade* and *Bolton* should not be extended to minors because it does not serve their best interests. First, an abortion, which is an elective surgical procedure, should not be treated any differently than other medical and surgical procedures. Second, there is more of a need for parental consent to an abortion than other medical procedures. Both the plaintiffs' and defendants' experts unanimously agree that for a minor an abortion is accompanied by a period of great stress during which time parental support and involvement is very helpful to the child and should be encouraged. Third, parental consent insures that there is an informed consent to the abortion.

C. *The Statute Is Narrowly Drawn And Not Overly Broad*

The appellant submits that the statute is narrowly drawn to protect the best interests of minor girls. In the District

Court the plaintiffs characterized the statute as a "state-sanctioned parental veto." However, by its very terms the statute provides that parents do not have the absolute right to veto a minor's desire to have an abortion. The statute specifically provides that if a minor girl is unable to obtain her parent's consent, a judge of the superior court may, for "good cause shown," consent to an abortion. Contrary to the District Court's interpretation of this provision, it must be presumed that the judge would take into consideration the minor girl's age, her relative degree of maturity, her ability to understand the abortion procedure and the possible complications which may result, and whether her parents' reasons for not consenting were arbitrary, capricious or not in the best interests of the minor girl. Then, the judge, in the exercise of his sound discretion, could decide whether or not to consent to the abortion.

Thus, unlike the statutes declared unconstitutional in *Coe* v. *Gerstein,* supra, *Wolfe* v. *Schroering,* supra, *Foe* v. *Vanderhoof,* supra, and *State* v. *Koome,* supra, which did not contain provisions for judicial review, the Massachusetts statute is narrowly drawn and tailored to serve the best interests of minor girls.

Although it might be argued that the two parent requirement is burdensome, such is not the case. This requirement is merely a reflection of the modern view that marriage is a "cooperative enterprise" and that children are entitled to the "affection, companionship, moral support, and guidance of both the father and the mother." *Russick* v. *Hicks,* 85 F. Supp. 281 (W.D. Mich. 1949).

D. *The Statute Furthers Legitimate As Well As Compelling State Interests*

The appellant submits that the statute furthers legitimate as well as compelling state interests. As previously stated,

the statute does not abridge any substantive right of minors because it is a codification of the common law. However, it does provide additional remedial safeguards. These safeguards include a criminal fine under Section 12Q, "of not less than one hundred nor more than two thousand dollars" for any physician who performs an abortion contrary to the provisions of Section 12P. Moreover, under Section 12R, the Attorney General or any one whose consent is required under the statute may petition the superior court for an order enjoining an abortion performed contrary to the provisions of Section 12P.

In *Ginsberg* v. *New York*, 390 U.S. 629 (1968), where this Court upheld a statute which prohibited a vendor from selling to minors certain reading material which would *not* be obscene for adults, the Court stated that "[t]he legislature could properly conclude that parents . . . who have [the] primary responsibility for children's well-being are entitled to the support of laws designed to aid discharge of that responsibility." *Id.* at 639.

The need for additional remedial relief in this area cannot be underestimated. Without the criminal and injunctive sanctions to enforce the statute, the only remedy against a physician who performed an abortion on a minor without the proper consent would be a civil action for damages for battery. The appellant submits that this remedy is inadequate for two reasons. First, a minor is naturally more reluctant to inform her parents that she is pregnant and desires to have an abortion than she would be if she needed a tonsillectomy. In a moment of stress and fear, a minor girl could seek an abortion from a physician who would not have an interest in her long term well being. Accordingly, a minor girl's parents may never know that their daughter had an abortion, and thus never have an opportunity to sue the physician who performed the abortion. Second, even if a minor girl's parents did learn that their daughter had an abortion, it is highly unlikely that they would want to subject their child to the publicity which may result from a public trial. Thus, it can be seen that the remedial provisions of the statute act as an effective deterrent to physicians who would not otherwise require parental consent.

Perhaps the most important interest served by the statute is the state's interest in preserving and protecting the constitutional right of parents to guide and protect their minor children. Recently, in *Wisconsin* v. *Yoder*, 406 U.S. 205 (1972), this Court stated: "The history and culture of Western Civilization reflect a strong tradition of parental concern for the nurture and upbringing of their children. This primary role of parents in the upbringing of their children is now established beyond debate as an enduring American tradition." *Id.* at 232. See *Prince* v. *Massachusetts*, 321 U.S. 158 (1944); *Pierce* v. *Society of Sisters*, 268 U.S. 510 (1925); *Meyer* v. *Nebraska*, 262 U.S. 390 (1923).

II. Procedural Irregularities

A. *The District Court Erred In Refusing To Join As Defendants The Parents Of Mary Moe*

The District Court refused to join the parents of Mary Moe as defendants. Moreover, Mary Moe's parents were never notified that she was a party to this action nor were they ever informed of her pregnancy or the abortion. The failure of the District Court to join Mary Moe's parents as party defendants has denied her parents their parental rights without due process of law. As Senior District Judge

Anthony J. Julian pointed out in his dissent: "Adjudication of this case significantly affects constitutional, statutory and common law rights of parents." These rights include parents' right to guide and protect their minor children and, more specifically, parents' right to consent to surgical procedures performed on their minor children. Mary Moe's parents were denied their right to due process of law guaranteed by the Fifth Amendment because they were not notified that their daughter was a party to this action and, consequently, they were not given an opportunity to defend these rights. See *Goss* v. *Lopez,* 419 U.S. 565, 579 (1975); *Baldwin* v. *Hale,* 68 U.S. (1 Wall.) 223, 233 (1863). Moreover, since the disposition of this action has, as a practical matter, impeded or impaired Mary Moe's parents in protecting these rights, they should have been joined as necessary parties under Fed. R. Civ. P. 19(a). Cf. *Thompson* v. *Groshens,* 342 F. Supp. 516 (E.D. Penn. 1972), *affirmed,* 475 F.2d 127 (3rd Cir. 1973), *cert. denied,* 414 U.S. 825 (1973).

B. *The District Court Erred In Refusing To Appoint A Guardian Ad Litem To Protect The Interests Of Mary Moe*

The District Court refused to appoint a guardian ad litem to protect the interests of Mary Moe. Mary Moe was represented by the same attorney who represented William Baird, Gerald Zupnick, M.D., and Parents Aid. As Senior District Judge Anthony J. Julian pointed out in his dissent, these three parties "receive substantial income from the abortions performed on minors and thus have a financial interest in the outcome of this litigation." In the circumstances of this case where the issue is of a controversial nature, and where Mary Moe's parents were not

informed of the pendency of this action, the District Court abused its discretion in refusing to appoint a guardian ad litem as provided in Fed. R. Civ. P. 17(c). See *Moe* v. *True,* 507 F.2d 9 (6th Cir. 1974).

C. *The District Court Erred In Refusing To Certify Questions Of State Law To The Supreme Judicial Court of Massachusetts*

The District Court's decision is premised, at least in part, on an interpretation of the meaning of the provision contained in the statute which provides that where a minor girl's parents refuse to consent to an abortion, "consent may be obtained by order of a judge of the superior court for good cause shown." The District Court has speculated that this provision requires the superior court judge to weigh the interests of parents as well as the interests of the minor in deciding whether to consent to an abortion. Since the Supreme Judicial Court has never had an opportunity to interpret the meaning of this language and there is no indication how the judges of the superior court would interpret this provision in practice, the District Court abused its discretion by refusing to certify questions concerning the interpretation of this provision to the Supreme Judicial Court under Rule 3:21 of that court. See *Lehman Brothers* v. *Schein,* 416 U.S. 386 (1974).

Conclusion

For the foregoing reasons, it is submitted that the questions presented are substantial and of great public importance. Accordingly, the appellant respectfully requests the Court to note probable jurisdiction and set the matter down for argument.

Respectfully submitted,

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July, 1975

APPENDIX*

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Civil Action No. 74-4992-F

WILLIAM BAIRD, et al,
PLAINTIFFS,
v.
FRANCIS X. BELLOTTI, et al,
DEFENDANTS,
JANE HUNERWADEL, et al,
DEFENDANT-INTERVENORS.

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that Jane Hunerwadel, the defendant-intervenor named above, individually and on behalf of all others similarly situated, hereby appeals to the Supreme Court of the United States from the final order of this Court declaring unconstitutional Section 12P, Chapter 112 of the General Laws of the Commonwealth of Massachusetts and all other sections of said Chapter insofar as they made reference to said section and enjoining the defendants from enforcing the provisions thereof, entered April 28, 1975.

This appeal is taken pursuant to 28 U.S.C. § 1253.

Respectfully submitted,

(s) BRIAN RILEY
BRIAN A. RILEY
Suite 520
40 Court St., Boston, MA 02108

(s) MARY LAURA RUSSELL
Suite 520
40 Court St., Boston, MA 02108

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* See note 1 and accompanying text on page 2 of the Jurisdictional Statement, *ante*.

AFFIDAVIT OF SERVICE

I, Brian A. Riley, an attorney of record for the defendant-intervenors herein, depose and say that on the 20th day of May, 1975, I served a copy of the foregoing Notice of Appeal to the Supreme Court of the United States on the plaintiffs by mailing copies of the same to Roy Lucas, Esquire, Suite 1501, Watergate South, Washington, D.C. 20037, first class, air mail, postage prepaid, and to Joan Schmidt, Esq., 27 State Street, Boston, Massachusetts 02109, first class, postage prepaid, both of whom were attorneys of record for the plaintiffs; and on the defendants by mailing copies of the same to the Honorable Francis X. Bellotti, Attorney General for the Commonwealth of Massachusetts, Room 373, State House, Boston, Massachusetts, 02133, first class, postage prepaid, and to Kenneth Behar, Esq., Special Assistant Attorney General, 11 Beacon Street, Boston, Massachusetts 02108, first class, postage prepaid, both of whom were attorneys of record for the defendants. I further depose and say that all parties required to be served have been served.

(s) BRIAN RILEY
BRIAN A. RILEY

Subscribed an sworn to before me at Boston, Massachusetts, this 20th day of May, 1975.

(s) RICHARD S. KELLEY
Notary Public
My commission expires 1/14/78